REMARKS

By this amendment, claims 1-30 are pending, in which claims 2, 9, 16 and 23 are currently amended. Care was exercised to avoid the introduction of new matter.

The Office Action mailed October 21, 2004 rejected claims 1, 3, 5, 7, 8, 10, 12, 14, 15, 17, 19, 21, 22, 24, 26 and 29 under 35 U.S.C. § 102 based on *Green et al.* (US 6,003,084), claims 2, 9, 16 and 23 as obvious under 35 U.S.C. § 103 based on *Green et al.* in view of *Chiles et al.* (US 6,618,393) and in further view of *Rao* (US 6,789,118), claims 4, 11, 18 and 25 as obvious under 35 U.S.C. § 103 based on *Green et al.* in view of *Humphrey et al.* (US 6,434,609), and claims 6, 13, 20, 27 and 30 as obvious under 35 U.S.C. § 103 based on *Green et al.* in view of *Wells et al.* (RFC 1795: Data Link Switching: Switch-to-Switch Protocol).

Applicants have amended the Specification and Drawings to correct discovered informalities.

Applicants acknowledge with appreciation the courtesy of a telephonic interview granted to Applicants' attorney on Jan. 19, 2005 at which time the subject invention was explained in light of Applicants' disclosure, the outstanding issues were discussed, and arguments substantially as hereinafter developed were presented. During the interview, Applicants' representative discussed the features of "performance enhancing functions" and "each of the plurality of buffers has a data structure that includes an expandable **header** to accommodate different message types." It was also explained how the claimed "plurality of modules" as recited in claim 2 differ from the applied references. However, no formal agreement was reached, pending the Examiner's detailed reconsideration of the application upon formal submission of a response to the outstanding Official Action.

Independent claims 1, 8, 15 and 22 recite "each of the plurality of buffers has a data structure that includes an **expandable header** to accommodate different message types." Also, independent claim 29 recites a "memory comprising a data structure including... a header growth field that provides a **variable header** length."

To satisfy the above features, with respect to the *Green et al.* reference, the Office Action (on pages 3, 7, 9) asserts that "[a] stack that sends and receives TCP/IP packets inherently implies an expandable header to accommodate different message types." Applicants respectfully disagree. First, the claims recite that "each of the plurality of buffers has a data structure" that includes an "expandable

header." Unfortunately, the Office Action refers to the format of a TCP/IP packet as having an expandable header to accommodate different message types. Applicants submit that there is no correlation between the format of a TCP/IP packet and how one of ordinary skill would design the data structure of the buffers. Second, inherent anticipation requires that the missing descriptive material is "necessarily present," not merely probably or possibly present, in the prior art. *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citing *Continental Can Co. USA, Inc. v. Monsanto Co.*, 948 F.2d 1264, 1268, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991)). Applicants note that the buffers, as claimed, need not be present to store the TCP/IP packet to which the Office Action refers.

As anticipation under 35 U.S.C. § 102 requires that each and every element of the claim be expressly or inherently disclosed in a prior art reference, based on the foregoing, it is clear that *Green et al.* fails to anticipate independent claims 1, 8, 15, 22 and 29, in part, because the features of "each of the plurality of buffers has a data structure that includes an **expandable header** to accommodate different message types" and "memory comprising a data structure including... a header growth field that provides a **variable header** length" are absent.

The secondary references of *Chiles et al.*, *Rao*, *Humphrey et al.*, and *Wells et al.* do not cure the deficiencies of *Green et al.* Therefore, the dependent claims 2-7, 9-14, 16-21, 23-28 and 30 are allowable at least for the reasons put forth for the allowability of independent claims 1, 8, 15, 22 and 29.

Additionally, the dependent claims are allowable on their own merits. For example, dependent claims 2, 9, 16 as 23, as amended, recite "a **spoofing module** configured to perform selective **spoofing of one or more connections within the communication network by adding information to or deleting information from the messages to enhance performance of the communication network**, a **connection module** configured to **multiplex the connections over a common backbone connection established over the communication network**, a **prioritization module** configured to **prioritize the connections for access to the backbone connection**, and a **path selection module** configured to **determine a path among a plurality of paths supporting the connections over the communication network.**" By contrast, the spoofing module of *Chiles et al.* "essentially 'spoofs' the host system." (Office Action, page 12 citing col. 3: 3-12 of *Chiles et al.*) To meet the claimed connection module, the Office Action adds on the reference of *Rao*, citing col. 4: 64 – col. 5: 2). This cited passage refers to a bus architecture of switch, and bears no relevance to "multiplex the connections over a common backbone

connection established over the communication network," as positively recited. Further, the Office Action refers to col. 9: 16-19 within *Rao* for a supposed disclosure of the claimed prioritization module. However, this passage merely states in generalities that "QoS is a method of classifying users to determined the priority with which packets are conveyed...." There is no mention of "a prioritization module configured to prioritize the connections for access to the backbone connection."

Therefore, the present application, as amended, overcomes the rejections of record and is in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at (301) 601-7252 so that such issues may be resolved as expeditiously as possible. All correspondence should continue to be directed to our below-listed address.

Respectfully submitted,

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